IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1281 of 2000

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

MUNIF RAMJUBHAI SHAIKH BLOCK NO 4, - Petitioner(s)
Versus
DY EXECUTIVE ENGINEER NANI SINCHAI(SMALL IRRIGATION) - Respondent(s)

==========

Appearance :

MR TR MISHRA for Petitioner(s) : 1,
MR GP VAGHELA for Respondent(s) : 1,

==========

CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 02/08/2007

ORAL JUDGMENT

Shri T.R. Mishra, learned counsel for the petitioner; Shri G.P.Vaghela, learned counsel

for the respondent.

2. The petitioner workman, being aggrieved by the rejection of the Reference by the learned Labour Court, Surendranagar in Reference [LCS] No. 164/91, dated 31.7.99 is before this Court with a submission that he was appointed in the regular cadre and as the work of Inward and Outward Clerk is still going on and as there was an admission made by one Chimanbhai Prasadbhai, Deputy Executive Engineer, examined by the District Panchayat,Irrigation Branch, the Court below was unjustified in not directing reinstatement of the petitioner.

3. Learned counsel for the respondent, however, submitted that the petitioner was never appointed in the regular cadre, he was appointed in the scarcity work, the wages of the petitioner were paid from the relief grant, after removal of the petitioner, no person has been appointed at his place and as scarcity work has come to an end, the petitioner would not be entitled to claim reinstatement or any other benefit.

4. Before the Court below, the petitioner did not say that he was appointed in the regular cadre or against permanent vacancy. The petitioner's appointment orders produced by the petitioner clearly show that he was appointed for a fixed period and the wages were required to be paid from the relief grant. The moment, the wages are paid from the relief grant, the Court would be justified in holding that such person was appointed in execution of the scarcity work. When a person is appointed in the scarcity work and scarcity work comes to an end, then, the appointment also comes to an end. Even otherwise, a person appointed in the scarcity work would not hold a civil post nor would be taken to be a regular workman and under the circumstances, he would have no rights.

5. Referring to the statement of Shri Chimanbhai Prahladbhai, Shri Mishra submitted that the said Chimanbhai clearly admitted that the work of Inward-Outward Clerk was taken from the petitioner and such work is still going on in the respondent establishment. The said witness

had stated that the applicant [petitioner herein] was temporarily employed for the relief operation works, he was issued regular orders and on completion of the relief operation works, the present petitioner was relieved. He also stated that work of relief operation only was taken from the petitioner. He further stated that when the petitioner was sitting in the office then also, the work relating to relief operation was taken from him, after the petitioner was relieved, no person has been appointed. In the cross-examination, he had stated that he did not know as to what work was taken from the petitioner at the relevant time. He stated that he came to the Sub Division in the year 1990 and therefore, he was unable to say anything that what had transpired in the establishment before that period. He also stated that at the time of termination of the present petitioner, what particular work was taken by the department was not known to the witness. Thereafter, it appears that a misleading question was put to the petitioner and the

witness in reply to the same had stated that the nature of the work which was taken from the petitioner if was of Inward-Outward, then, the such nature of work was still going on. From this statement, one cannot presume that the witness was admitting the claim of the present petitioner. A witness cannot narrate about the incident which he had not witnessed but can speak on the basis of the records. In the present matter, the witness categorically stated that he did know as to what type of work was being taken from the present petitioner and if that was so, then, his statement which was obtained from him that the work of Inward-Outward Clerk goes on, would assume no importance.

6. Shri Mishra, learned counsel also submitted that the petitioner was taken into services after the names were called for from the Employment Exchange and the petitioner was subjected to interview. In the opinion of this Court, this also would not provide any solace to the petitioner, because, if the Panchayat, to

maintain transparency, called for the names from the Employment Exchange and selected the best out of the lot after taking their interviews, then such selection would not provide a foundation to contend before the High Court that they were regularly appointed. The orders of appointment were for a limited fixed period, the salary was to be paid from the relief grant. If this evidence is appreciated in its true perspective, it would only appear that the petitioner was not holding any post in the establishment but in fact, was appointed in the scarcity/relief operations. The Court below was justified in dismissing the Reference.

7. I find no reason to interfere. The petition is dismissed. Rule is discharged accordingly. No costs. Interim relief, if any, is vacated.

[R.S. GARG, J.]

pirzada/-